MEETING

STATE OF CALIFORNIA

STATE LANDS COMMISSION

STATE CAPITOL

ROOM 126

SACRAMENTO, CALIFORNIA

THURSDAY, DECEMBER 17, 1992

10:00 A.M.

Vicki L. Medeiros, C.S.R.
License No. 7871
COMMISSIONERS PRESENT

Gray Davis, State Controller, Chairman
Leo T. McCarthy, Lieutenant Governor, Commissioner
Susanne Burton, Commission Alternate
for Thomas W. Hayes, Director of Finance

STAFF PRESENT

Charles Warren, Executive Director
James Trout, Assistant Executive Director
Robert Hight, Chief Counsel
Jane Sekelsky, Land Management Division

ALSO PRESENT

Jan Stevens, Deputy Attorney General
<table>
<thead>
<tr>
<th>Index</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Proceedings</td>
<td>1</td>
</tr>
<tr>
<td>Confirmation of Minutes for the meeting of September 23, 1992</td>
<td>1</td>
</tr>
<tr>
<td>Consent Calendar Items off calendar: Items C05, C31, C38, C49, C52</td>
<td>1</td>
</tr>
<tr>
<td>Consent Calendar Items C01-51, except those off calendar</td>
<td>2</td>
</tr>
<tr>
<td>Item 53, Auburn Investors (Applicant)</td>
<td>2</td>
</tr>
<tr>
<td>Item 54, M &amp; T Staten Ranch, State Lands Commission (Parties)</td>
<td>30</td>
</tr>
<tr>
<td>Item 55, Sutter County (Applicant)</td>
<td>31</td>
</tr>
<tr>
<td>Item C47 removed from Consent Calendar</td>
<td>43</td>
</tr>
<tr>
<td>Adjournment</td>
<td>43</td>
</tr>
<tr>
<td>Certificate of Reporter</td>
<td>44</td>
</tr>
</tbody>
</table>
COMMISSIONER McCarthy: Good morning, ladies and gentlemen. This is the meeting of the State Lands Commission. Welcome to all of you.

We apologize for the few minutes delay. Without any objection, the Minutes of the last Commission meeting will be approved.

The Consent Calendar today, Consent Item 50 will be moved to the regular schedule.

EXECUTIVE OFFICER Warren: That can remain.

COMMISSIONER McCarthy: We are taking the following items off of Consent: 5, 31, 38, 49 and 52. They will all be considered for future actions. The remainder of the Consent Calendar Items that are before the Commission, are there comments on those by members of the public?

If not, the remainder of the Consent Calendar Items will be approved.

Okay. We will move to the Regular Calendar, Item 53.

EXECUTIVE OFFICER Warren: We have three Regular Calendar Items, Commissioners. Three regular items before you, Items 53, 54 and 55.

They are all three handled by our Land Management
Division. Jane Sekelsky will present them to you.

We have attendance record slips indicating that there are persons interested in addressing the Commission on both Items 53 and 55.

Presenting 53 is Ms. Sekelsky.

(Thereupon Chairman Davis arrived.)

MS. SEKELSKY: We have before us an application by Auburn Investors to construct a marina on the Sacramento River below the confluence of the Feather River in Sutter County.

The marina is proposed to be off shore of an existing trailer park. We, as staff, have concerns about the environmental impact of the project, and after initial study determined that an EIR should be completed before the Commission would act on the project.

We have disagreement with the applicant for the need of an EIR and scope of the document. We are facing time limits to bring this to you for action.

Given the fact that we have not yet resolved the disagreement for the scope of the document, and because of the Permit Streamlining Act time frames set by law, we ask you to deny the application, without prejudice to the right to reapply and go through the process of an environmental review.

We have concerns regarding the location of the
project and the very critical types of habitat that exist in the area as to whether staff would ultimately recommend approval, but the applicant is free to come back and go through the EIR process.

EXECUTIVE OFFICER WARREN: We have project proponents present who wish to address the Commission.

CHAIRMAN DAVIS: We'll take the proponents.

EXECUTIVE OFFICER WARREN: Mr. Faber, Mr. Ranlett and Mr. Kaveney.

CHAIRMAN DAVIS: Maybe you should sit at a chair so that we can hear you, and the other people in the room since the mikes and the tapes aren't working today.

MR. FABER: My name is Bob Faber. Yes, I used to be with you on staff. I appreciate being back and having the chance to discuss this item with you.

I have asked Mr. Kaveney, the project proponent, to be here, and John Ranlett, the senior biologist who worked on the project, in case there are questions that I do not cover.

What I wanted to do is take a minute to explain the existing project, the history that is associated with it and the existing environmental issues to set a context for what is the basic question that has come up in my mind from conversations with the staff.

I'll try to speak up as I am over here. As Jane
mentioned, the proposal is to extend the existing State
Lands Commission lease to place a marina in this area near
the campground. It also would involve moving some existing
rubble into an area along the shoreline to support the
existing vegetation to have an opportunity to recover and
put a couple of walkways from the marina to the on-shore
location.

This is part of a project that has quite a bit of
history, and I could condense it a lot. The entire
campground marina facility was reviewed and authorized in
an environmental impact report for the construction of a
larger marina than what is proposed in 1976. The proposal
at that time that was evaluated included the construction
of a restaurant, club house and fuel dock with the marina.

The infrastructure on shore to support the marina
facility was constructed, but then over the course of a
couple of years the marina portion was not built for
financial reasons. That did not work out at that point.

They came back to the Commission and withdrew the
lease area and only have the lease area on this end, and
they put in the boat launching ramp.

CHAIRMAN DAVIS: The Commission had granted
authority for the project, had approved it?

MR. FABER: Yes.

The project was authorized. It was a
significantly larger project than the one before us.

CHAIRMAN DAVIS: Why wouldn't the applicant have sold that, or, assuming that he had approval, convey that?

MR. FABER: He gave it back to the Commission because he was not in a financial position to complete the portion for the marina. Rather than paying the rents for the portion he was not using, he gave it back to the Commission and had a lower rent to pay in the intervening time period.

The reason that the project is proposed at this point is for, one, environmental recovery. It's part of the thing that staff and I do not seem to be on the same wave length.

The existing environmental values, I will talk about in a minute, we believe can best be accomplished through the type of project that we are suggesting. One of the things that we are looking for is environmental recovery.

Two, there is boat traffic from downtown Sacramento many miles that come up to this location, and we feel if the marina is put in there will be considerably less traffic because the area below and above is a popular fishing activity now. If they only need to go from here instead of miles down the river, it's an advantage. It's for people who have the boats docked here and having the
day use marina for the convenience of people launching the boats.

The boat launch ramp is there, but people that put in at Discovery Park, it's more convenient for people not to bring the boats back and forth so much. It has a nominal economic value, the minimum rents is $3,000 to the State and $15,000 revenue to the county from tax, and I think in today's economy for the State government, every dollar is worth something.

Lastly, we think that it will be easier to use the fishing and boating opportunities in the area. There are three environmental values that have been identified of significance.

There are several others that are important, but they are not so much debated at this point. The primary was shade for river aquatic, cover for riparian river habitat on the river.

The value of this habitat is that it provides shade for fish and mammals and provides cover for fish, places to dart into the bank and be protected from the larger predatory fish. It provides food and provides ecological niches that allow the ecology to grow.

So, it's valuable for birds, mammals and fish, all three. The question is, why would we want to go ahead and proceed?
There are a couple of very good reasons. One, I need to pass out some photographs, if I could for a second. These are for the Commission, and this is for staff. The only difference is that I have a copy of an aerial photograph in there for them.

If you look at the photograph, which is photograph on the wall, photograph B and C, if you put B on the right and C on the left, it's contiguous.

As you're standing at this location and looking out toward the river, it shows what the tree vegetation is on the river. As you see at this spot there are large breaks in the vegetation, very little trees. There is little habitat that we need to protect.

Secondly, there is quite a bit more habitat on the far side of the river and both sides of the property here. The amount of break that currently exists as far as fish migrating back and forth, it takes time for fish to pass this. It's not a significant break in the overall vegetation that is being protected.

What is more important is that there is continuing erosion along the river, and if we don't get the shore up along here what ultimately is going to happen is that this will be eroded away and the campground will be here and what little bit of habitat that is valuable there will fall in the water and wash down.
We’re proposing to put the rubble here, shore
that up and allow the area to recover, because when you put
the marina here and these two walkways in, these walkways,
as you see from the photographs, can be placed between the
existing breaks in the vegetation. There is no need to
climb up and down the bank.

By the nature of having the walkways, it’s easier
for them to access the boats. So, what we feel is that
there would be very, very little impact on this type of
habitat by putting in sixteen pilings out in the water,
bringing in pre-fabricated docks and putting the two
walkways into the shore. There would not be a need to
construct anything on the uphill at all.

I wanted to take a second to talk about the
contacts with staff and where the project is at this point.
Remember it was already authorized at one point in time.
Since Mr. Kaveney has been back involved in the project, he
has gotten all of the Federal authorizations to construct
the project.

In 1990, the end of 1990, he was working with
staff and received a letter from staff which indicated that
the project process would be that his old lease would be
given back to the Commission and a new lease issued as soon
as the environmental process was completed.

It was completed in 1991, fifteen months ago. He
was sent a lease, which he signed and sent back to the Commission.

During the intervening period, we had the ongoing discussion of whether a new environmental impact report is necessary. We do not feel, for the reasons that we have talked about, that a new EIR is required.

Finally, in October of this year, in conversation with staff, we agreed let's just go ahead and do a focus environmental document, supplemental, that deals with the topics not dealt within the EIR. When we sat down and started to work out the details, we got a letter that it was not going to make a difference if we did that or not.

I will just read the last sentence of the letter, in conclusion, based on the concerns outlined above, staff of the Commission would not be in the position to recommend approval of the project to the Commission, even after the receipt of the EIR.

That surprised us.

CHAIRMAN DAVIS: What were the concerns?

MR. FABER: The types of issues, the impacts on the shade aquatic river habitat and concerns about growth inducement.

I might point out that the environmental impact report that was done before found that, with a larger project, existing facilities in the area would be able to
support what is there. Now it's a scaled back project, and, if anything, there is more existing facilities. So, it's not a likely problem.

There was a question raised about what effect this has on the river habitat and fishing opportunities. We see the fishing opportunities as being above and below the marina, not at the marina. The marina would improve the fishing opportunity, if that's a concern that needs to be met.

Staff sent the letter, and we got together, and they said we want you to understand how strongly we feel about this. I have never doubted the staff's conviction on the subject. They have reemphasized this on several occasions.

The word that I got was that it does not make any difference. We could go through the project, Commission policy was such that they did not think that if they were carrying out Commission policy that you would want a marina there in any case.

I found that personally surprising. Even though it was calendared for a rejection without prejudice, we sent a letter last week withdrawing the application and are reapplying to eliminate the AB-884 deadline problem that the Commission faces, but we needed an opportunity to explain the project to you because, as staff I think
rightfully pointed out, there are environmental issues, but we’re dealing with them.

If we get to the other end of the project and have done all of the work and have things addressed and taken care of, if the Commission does not want a marina there under any circumstances, we want to know that at this point.

In the last two years since we have been back at the project staff has made a couple of statements that again surprised me in terms of the current position. It’s an excellent site for a marina and the highest and best use for the property as it’s proposed use as a commercial marina.

Given the history of something that has been through the environmental process, yes, sometime ago, it was a bigger project, authorized by Sutter County and the State Lands Commission issued a lease, and now the folks have put in the infrastructure and done the stuff on shore and are going back to complete it, it sounds like no matter what you do you’re not going to put in a marina.

I wanted the opportunity to discuss that with you.

COMMISSIONER McCarthy: The fact that an EIR was done and the permit was issued in 1976, or thereabouts, is slightly persuasive but doesn’t necessarily control the
issue in my mind. It's a pretty good passage of years and
a lot of things change along the river that influence our
perspective.

I wanted to ask a question on Mr. Faber's
suggestion that over the span of the last year or eighteen
months that Commission staff has characterized this
application in the manner that he suggested, that this
wasn't a good or ideal or whatever place for a marina.

I'm curious why we sent the applicants a copy of
a draft lease or suggested lease if, in fact, we did do
that, and any other correspondence we had which would have
in any objective way induced the applicant to think that we
were well on our way of approving a permit to cover the
proposal before us.

MS. SEKELSKY: I think Bob and I will
characterize the correspondence differently.

He referred to an appraisal which the appraiser
indicated that it was an ideal site for a marina as the
highest and best use. The appraiser doesn't look at
environmental value but for land use restriction on the use
of the land that affects the value that may be in response
to environmental concerns.

If an appraiser made that estimate, it was
without regard to environmental concerns and without regard
of economic feasibility of the project and without regard
of the past performance of the lessee. He’s looking at land value only.

If having an appraiser indicate that an ideal site for a marina that would support all of the concerns, it’s an area that is ripe for that kind of development, a project similar to this one could be inducing, and given the critical nature of the habitat in the area, it’s one of our major concerns.

I do not think that we have done anything to indicate to the applicants that we are well on the way to approval of the project. The EIR done before was in 1976. It was almost twenty years ago, and not adequate by today’s standards given what we know about the remaining habitat of this type.

There are other proposals for new town developments downstream of the site which would add to road inducement in the area. We have many issues which Bob pointed out could be examined in an environmental report.

We, as staff, are more than willing to work through that process. However, it was only fair to the applicants to let them know that the information that we have at this point in time, we don’t anticipate any information coming out of the process to persuade us that the project could be constructed without adverse impact.

COMMISSIONER McCARTHY: What was the lease that
Mr. Faber referred to?

MS. SEKELSKY: We sent a copy of the form lease.

We might in that document indicate what typical terms would be, in addition to the general standard provisions.

EXECUTIVE OFFICER WARREN: As example of a lease in the event the project was otherwise acceptable the applicant would be obliged to sign.

It’s not an offer to execute a lease.

COMMISSIONER McCARTHY: I recommend that you review that practice.

If there is a reasonable prospect that at the end of the total analysis of the program the applicant is going to be told that the staff would not recommend it, anything that induces expenditure of money by the applicant that doesn’t allow them to make a judgment as to whether they are going ahead or not should be avoided.

Maybe in the total correspondence that message was there, but I would take a look at sending out proposed drafts of leases way in advance of decisions being made.

Let me ask you this question, you devoted some of the early testimony to talking about the habitat in the area. Is this and giving us the pictures, is the deterioration of the habitat is that man induced or natural erosion?
MR. FABER: It's both in that there is a certain amount of erosion that exists on the river at that location. It's subject to that.

There is a certain amount of deterioration associated with the mere fact that any time where the public has a place to put in a boat, and the boat ramp was authorized earlier, and people are near the facility, they use the bank to go back and forth since the river is available to everybody.

COMMISSIONER McCARTHY: If you showed us pictures of the area on both sides of the property, the subject of the application, what would they look like?

MR. FABER: The last photograph in the package is labeled D. If you look on the picture, the left side, the vast majority of the left side is the habitat to the south, and you see a little bit on the right-hand side, which is a bit of the existing property where you can see it's cleared. B and C show that area.

COMMISSIONER McCARTHY: If it were natural erosion, wouldn't the natural erosion affect the adjacent areas in a similar pattern that they have affected the area?

MR. FABER: They would have the same effect. The difference in the two pieces of property is that you have got -- I'm guessing -- several hundred feet of depth of
that type of habitat between the levee toe and the water.

At the location where the property is it's thin. There are only a few trees there. If the erosion continues at that spot, those will ultimately be washed away.

COMMISSIONER McCarthy: The impression that I have from what you have said so far is the habitat is healthier in the adjacent property. I'm trying to decide how much weight to give to erosion of the habitat in the land within the application is man induced or natural erosion, and I come to the conclusion it's mainly man induced.

Is that a fair conclusion?

MR. FABER: I could not give you a direction on that.

The significance of the specific habitat that we're talking about is that margin that exists along the river. The habitat is as far in as it is several feet inland. It's not an impact on the fish. It provides shade for the river and things dropping out of the trees for the fish.

If you erode an area of 200 feet of depth of this habitat, you can erode for years and years and there is something on the bank to fall over.

If the erosion continues on the site where this proposal is suggested, once those trees are eroded away,
all you have is the existing campground with nothing hanging over.

We want to shore up the existing habitat and allow for a recovery program so there will not be as much of the human or natural erosion. I believe that the property will be able to recover significantly because people will access the boats across the walkways that go between the existing vegetation.

There is a vertical drop of some ten or twelve feet during normal water conditions. That area will recover because it's not subjected to the erosion or human activity.

CHAIRMAN DAVIS: I want to pick up on a couple of things that you mentioned.

Does the staff have a view today, you inferred an answer, but this is to Charlie, does staff have a view today whether or not this location or some location nearby is an appropriate place for a marina?

EXECUTIVE OFFICER WARREN: Of course we are presently basing our conclusions on information not supported by environmental report.

CHAIRMAN DAVIS: I'm generally of the view responsible development can protect and enhance environment.

EXECUTIVE OFFICER WARREN: Staff would assume
that.

CHAIRMAN DAVIS: Putting this project aside, I want to know if the staff believes a responsible developer of a marina on this site or proximate to it is something that they prefer or not?

EXECUTIVE OFFICER WARREN: Present information suggested that this particular area would be inappropriate for a marina or any use that would be -- the geological formation is unique in that the confluence of the Sacramento River and Feather River is a major slough. These are pathways for populations that are endangered or threatened. We have main cases for Fish and Wildlife Service that the environmental issues concerning that would be involved in putting the marina in this location need to be fully evaluated in the EIR.

The fish and wildlife are subject to the requirements that nothing be done to affect them in any way. It is based on that information which we have and our own understanding of the geology that suggested to us that the applicant, that we should pause the processing of this lease application to acquaint the applicant with the barriers that needed to be overcome, certainly the need for an environmental impact report to address these issues to consider the cost of the report, and then to face the probability after undergoing that expense and that time,
which is a good sum in some respects, he's going to face a difficult task of obtaining approval because of the gravity of the concerns that these two agencies had.

CHAIRMAN DAVIS: Those two being?

MS. SEKELSKY: U.S. Fish and Wildlife Service and the State Department of Fish and Game.

CHAIRMAN DAVIS: You indicated that you had all the Federal -- you can get to that in a second.

MR. HIGHT: If I could address the question that the Lt. Governor asked.

Mr. Trout, who has a memory better than mine, found the lease has a clause, the submission of the lease by lessor, its agents or representative doesn't constitute an option or offer to rent the premises on the terms or conditions or reservation in favor of the lessor.

It's the intent to send the lease so that he is to know that that is a typical draft of terms and conditions and any changes, if any, will be negotiated from that.

MS. BURTON: Say it in English.

EXECUTIVE OFFICER WARREN: The issue before the Commission for consideration, we have offered to accept a reapplication in a manner of course for the purpose of getting an environmental impact report, and I understand that the applicant is prepared to do that but would like an
indication from the Commission that at the end of the road there would be a good probability that the project would be approved.

Staff cannot give applicants that assurance given the number and gravity of the environmental concerns that have been raised. It’s his call, the applicants call.

I’m afraid that if the process was undertaken, he could come to you and say, "Why didn’t staff tell us that we were not going to recommend approval of the project?"

What we are doing now is warning him that we are not prepared to say that this project would be approved because we do not feel that the effects will be mitigated, and there is no overrideable consideration, and maybe the environmental impact report can address that.

It’s the risk that they are taking. We’re not urging them to take it.

CHAIRMAN DAVIS: I think we understand that.

Let me say this, by general observation, how much has our Commission staff been reduced by the budget, can you tell us, in the last two years?

EXECUTIVE OFFICER WARREN: When I became Executive Officer, we had authorized staff of 247. We lost 102 positions. We’re at about 140.

CHAIRMAN DAVIS: I want to say for the benefit of the staff, for your children to have a chance to get a job
there has been to be responsible growth.

I deal with the financial aspects in the State. We created three million jobs in the 80's. In February of 1991, we have net job loss.

This project may not have merit, but the Commission Members, this Commission Member has to balance the needs of putting people to work and protect the resources. We have environmental and financial responsibility.

We cannot look at every project and say we're against it. The staff will diminish in size and applications will take longer and longer to process, et cetera, et cetera, et cetera.

EXECUTIVE OFFICER WARREN: You will find in the large number of Consent Items before you that fact is acknowledged.

The fact that we have the instance of some applicant who is unhappy with the staff's work should not be taken to indicate that the staff is too busy to not realize the need to balance.

CHAIRMAN DAVIS: It's a former member of your staff actually working before you got there, Charlie, who is well-aware of the good quality work that the staff does as well as the hurdles in overcoming a staff recommendation.
COMMISSIONER McCARTHY: How much of an investment -- tell me again what the facility is that is there now and how much of an investment is there?

MR. FABER: The existing facility is all of the upland campground with the bait shop and the rest rooms and other ancillary infrastructure. It's a campground.

There are hookups along here that people come in and make use of on a rotating basis.

COMMISSIONER McCARTHY: What is the dollar investment involved?

MR. KAVENEY: We have $175,000 in the campground and launching ramp since 1975 when we acquired the property.

COMMISSIONER McCARTHY: You collect rents or revenue on this?

MR. KAVENEY: Yes.

COMMISSIONER McCARTHY: Not to throw a totally new factor in here, has staff had any conversation with the applicants about the possibility of looking along the river in the proximate vicinity to see if there is an opportunity for staff to give the applicant some chance to have this kind of development somewhere else where there is not a threat to habitat?

MS. SEKELSKY: We have not, but we will be willing to explore that.
COMMISSIONER McCARTHY: Is that something that your clients would be interested in?

MR. FABER: The obvious limitations are that, number one, you have other places that are more important for the habitat value and otherwise that are privately owned, but he owns the property.

COMMISSIONER McCARTHY: Are you willing to explore the opportunity so that your client has the chance to go forward with the kind of development?

MR. FABER: One never hates to shut all doors, but with $175,000 invested in the site, it's difficult to pick up and do something else.

COMMISSIONER McCARTHY: No one is proposing to shutdown the existing operation. That's not part of the conversation as I heard it so far.

MR. FABER: The reason that I referenced that is the current operation is of marginal economic value. You barely break even, if at all, because the ability to have the marina part of the original application, the economics of the project was a motivating thrust to put in the project. Just the campground is very, very difficult.

Could I address a couple of the points that Mr. Warren brought up? You're correct, I said that all of the Federal authorizations had been obtained.

That comes through the process of the Corps of
Engineers being at the property and other Federal agencies that are involved, and the Fish and Wildlife Service has reviewed the project and did not in anyway try to stop it through the Federal authorizations process.

When the study was done from the Commission, Fish and Wildlife commented and said that a negative declaration was adequate for the property. They did not look at the property.

CHAIRMAN DAVIS: Was this in 1976?

MR. FABER: The recent evaluation process.

Mr. Warren is correct that Fish and Wildlife Service has designated this reach of the river as having an important value, but it also specifically stated in the same regulation that things that do not have significant impact will be allowed to be built, and we’re contending that responsible development can be done without significant impact and can enhance environmental values.

Fish and Game raised questions, and the two were the loss of fishing opportunity, and we’re trying to deal with that subject of looking where the fishing opportunity exists.

The contention that the applicant has is that it’s above the confluence and below the property. It’s interesting to note that within the last few weeks a person on contract with the Department of Fish and Game who is
responsible for counting where the fishing activities take place here has stated that the fishing doesn’t take place at the spot where this is going to take place.

We’re trying to get that person to talk to the right person with Fish and Game.

The remaining issue with Fish and Game is the notion of what affect on the species, like the endangered salmon, we’re looking at the habitat and the ability to survive and avoid the predators, and that is why the shaded habitat is important. It’s the shade and underwater structure associated with it.

We believe we’re going to improve that because with the existing erosion and human traffic that habitat is being degraded. If we lift the people above that and lessen the erosion process, we give it an opportunity to recover, and it’s a benefit there.

Do not misunderstand, and staff, I appreciate their candor, and I want to know if that’s what they feel. I disagree, and we’re trying to say for the reasons as we have discussed it’s a meritorious project, but we want to know if the Commission shares the view that no matter what we do we cannot put in the marina.

CHAIRMAN DAVIS: You’ll have to check for yourself what the feeling is. We do not want to ram something down the staff’s throat.
What I suggest on this, or give the direction to
the staff to work with the applicant and get back to us in
sixty days or so to see if there is a portion of the
project or modification in the existing proposal that could
meet or reduce the objection.

EXECUTIVE OFFICER WARREN: The time constraints
are such that the Commission today has to act on the
staff’s recommendation.

We will continue to work with the applicants.

CHAIRMAN DAVIS: Do you agree with that?

MR. FABER: I do not want to mischaracterize that
staff is not willing to work with us.

They are coming up with a conclusion that tells
me there is no point in going forward, and I’m not looking
for the Commission to make a decision when they do not have
the information, but I want to know that when we’re done
with the process that you have made the decision that you
do not want the project anyway.

We have eliminated the AB-884. We withdrew the
application.

EXECUTIVE OFFICER WARREN: The letter to which
Mr. Faber is referring to, the additional letter that they
withdrew the application with a certain understanding set
forth, it’s not an unconditional withdraw. If it were, we
would have no problem with that.
There has to be environmental documentation. That will take some time, more than sixty days. Staff is not prepared to make a decision. We cannot make a decision until the documentation is completed.

We will continue to work with them to further the environmental documentation to scope it out fairly and adequately to make sure that the concerns that we have identified are met in the review. Based on that, we will bring the documentation back to you with our evaluation.

CHAIRMAN DAVIS: All that is likely to take?

EXECUTIVE OFFICER WARREN: Several months.

MS. SEKELSKY: Under the Permits Streamlining Act, we have a year from the time that the application is deemed complete. That doesn't mean that we will have to take the full year, but it could.

CHAIRMAN DAVIS: After the application is complete?

MS. SEKELSKY: We have one year following receipt of the complete application to complete the environmental review process and bring it to you for action.

EXECUTIVE OFFICER WARREN: It's up to them to complete the documentation.

CHAIRMAN DAVIS: Which will take how long?

EXECUTIVE OFFICER WARREN: I can't say.

CHAIRMAN DAVIS: I feel we are not bound by
previous Commission acts like a court. We did act in 1976, and I do not see anyone challenging that we did a larger project, so I assume that is an accurate statement. I assume that you have the financing in place to go through this?

MR. FABER: Now?

Yes, I believe that the financing is available. That is not the problem.

Mr. Kaveney any was placed in involuntary bankruptcy at the time and he won the case. Once you're placed in it, you're limited in terms of the ability for financing.

He can go forward now.

CHAIRMAN DAVIS: I'm sympathetic to the applicant, but that doesn't mean that I'm going to vote for the project.

We're in a different era. What is reasonable, Charlie, in terms of us taking another look at this in six or nine months?

EXECUTIVE OFFICER WARREN: We can look at it any time and give a status report. We may not be able to come forward with the final recommendation. It's beyond our control.

MS. SEKELSKY: Assuming that the project that is submitted has gone through the study process, we're two
months into the application process, unless there is a reason that the environmental impact cannot be done in a six to nine month period, it’s a reasonable time.

CHAIRMAN DAVIS: Do you have a sense of this now?

COMMISSIONER McCARTHY: Now that we have stated our position clearly on the matter, I will add that you at least explore alternative sites. Your applicant has to be willing to do that, and if not, it’s his choice entirely.

But you should at least look at that to see if there is that option for you.

MR. FABER: We will, definitely.

CHAIRMAN DAVIS: Could we take a look in ninety days?

I’m sensitive to people spending a lot of money and hearing no.

EXECUTIVE OFFICER WARREN: We will give you a status report at the meeting of the State Lands Commission in April.

CHAIRMAN DAVIS: Okay. We will have the applicant here.

COMMISSIONER McCARTHY: I’ll give you back the pictures today to cut down on the expenses of having to reproduce them.

CHAIRMAN DAVIS: Anything further?

MR. FABER: Not other than to say that if the
staff wishes for you to go ahead and vote, it doesn't make a difference.

The nature of the letter was conditional that I have to talk to you. I thought that the letter submitted exactly the same application that was under the process all along.

I appreciate the time and consideration you have given.

CHAIRMAN DAVIS: All right. We need to deny the application?

EXECUTIVE OFFICER WARREN: Yes.

MS. SEKELSKY: That's the staff recommendation.

CHAIRMAN DAVIS: Okay. It's unanimous.

Item 54.

MS. SEKELSKY: It's a project we're excited about on Staten Island in the Delta. This involves a proposal by the landowners to work together with the State Lands Commission to develop a plan for ber, restoration on the outboard side of the levee to restore vegetation and riparian habitat and stabilization for the levee to protect the island from flooding.

It has possibility to provide environmental benefit and stabilization, and we think that it serves as a prototype for future projects on levee projects.

CHAIRMAN DAVIS: Any opposition to the project?
All right. Consider that three votes for approval.

MS. SEKELSKY: Item 55 is another item recommending a rejection of application merely because of procedural problems.

We have the time running on the Permit Streamlining Act. This is by Sutter County to maintain an existing boat launch ramp and extend it on the Feather River near Yuba City. We have worked with the county and thought we had negotiated agreement as to their coming forward with the permit from the Commission.

They executed a permit document and had crossed out our standard provisions. We worked with them and agreed that we could waive two or three of the provisions but not the provisions that protected the Commission for liability pertaining toxics, hazardous waste, bonding and insurance requirements.

The county wants those waived and will not sign the document. So, staff recommends denial without prejudice and authorization to eject the county and the boat ramp from state land.

CHAIRMAN DAVIS: We have Supervisor Licari indicating that he would want to speak.

MR. LICARI: My name is Pete Licari. I am a member of the Sutter County Board of Supervisors and have
been designated by the Board to represent Sutter County on
the issue before you.

I have a short prepared statement which, with
your consent, I would like to read. After reading the
statement, I would be pleased to answer any questions that
you may have.

I would also like to introduce to the Commission
the Sutter County Public Works Director, Bob Barrett, who
has advised our Board on this matter and who will help me
with any technical issues which arise.

CHAIRMAN DAVIS: If you would, since we have the
statement, is it possible to summarize points you want to
make and then answer the questions of the Commission
Members?

MR. LICARI: Yes. I’ll try. If not, I’ll have
Mr. Barrett respond.

I’m not too familiar with the issue as this has
just become -- as a Board Member, I was not on the
committee that discussed the general proposal of the
proposed lease. The real problem is the liability that
would be imposed on Sutter County if the lease is signed as
submitted to the county.

We have been advised by our counsel that this
provision really is unfair because we have no control. The
county has no control of the hazardous waste that is coming
from above the ramp that is in question.

The other provision is that Sutter County leases the boat ramp from Levee District No. 1. So, consequently we would be accepting the liability for lands that we are leasing for this boat ramp.

I think that the real question on the toxic waste problem is that the county would be liable for anything that comes down from any other area. I don’t understand why they have put that provision in there.

The other thing, the Lands Commission I understand wishes us to remove that portion of the existing boat ramp which occupies State owned lands. I believe that we have not been able to find how long ago that the boat ramp was put in. It was several years ago, and Mr. Barrett can probably speak to that.

We have no authority to negotiate with the Commission on this issue, and we hope that you concur with our position to ensure the public’s use of the boat ramp. There is a boat ramp ten miles upstream in Live Oak, and another one five miles downstream, which is mostly out of the water most of the time and almost unusable.

What we’re trying to do is assist the constituency in Sutter County in having a viable place to put their boats in the water.

With that, I would address any technical
questions that you have to Mr. Barrett as I am not that familiar with it.

CHAIRMAN DAVIS: Thank you very much.

Anyone who wants to respond to the comments that the Supervisor made with reference to the toxic problem?

EXECUTIVE OFFICER WARREN: That’s our standard lease provision. They are boiler plate language in conformance with the Federal and State law.

MS. SEKELSKY: These are part of the standard provisions. They are entered into the lease form and approved by the Commission in the last year as part of the lease form.

They are provisions are intended to protect the Commission as the agency having jurisdiction over the State owned lands from liability that may result from toxic materials being released on the property or reaching the property and hazardous substances or conditions that may exist on the property.

There are in all of the leases now. We feel it’s necessary to retain the conditions and protect the Commission from the liability.

I do not know, having reviewing it from the County perspective, if it adds liability to what they have. With regards to the concern about public access, we encourage that as an appropriate location, and it’s not the
intention to argue with the need for the launch ramp or the
desirability of it.

We’re concerned about the liability that the
Commission incurs, and that’s why we require the
provisions in all of the leases.

CHAIRMAN DAVIS: Do we just amend leases coming
due this year?

MS. SEKELSKY: The leases coming before you for
new lease term or amendment would have that provision added
to them or any new lease.

CHAIRMAN DAVIS: Okay.

MS. BURTON: Sounds to me like as the laws
change, as we learn about toxic dumps and spills, we are
just trying to protect the Commission.

The county feels that they are put at risk for
other parties that might cause a problem to develop and yet
we’re trying to say you’re operating the facility, and you
have to be responsible for your actions; is that right?

MR. HIGHT: Right, for your actions and the
actions of the people who use the facility.

MS. BURTON: If there are unauthorized uses, they
are responsible because they are to keep the uses
consistent for the purpose for which the lease is given,
and it’s not to have hazardous materials there?

MR. HIGHT: Correct.
MS. BURTON: I do not see how we can avoid this. Are you going to let the people dump things there?.

MR. BARRETT: Bob Barrett, as identified by Supervisor Licari. I’m the Public Works Director for Sutter County’s Board of Supervisors.

The concern in not signing the lease is not in holding the State harmless in the event of actions that the County takes but the concern of third parties over which there is no control.

This boat ramp is a free boat ramp. There is no county staff on-site governing the use. No fee is involved. The county has no control over anyone using the site. Any third parties could take action without knowledge or permission and cause a problem to occur on lands that we’re leasing from a third party, if you will.

That is where the concern comes from, not the liability action.

CHAIRMAN DAVIS: Are you authorized to charge a fee for the use of that landing?

MR. BARRETT: It would require action from the Board of Supervisors to initiate a fee.

CHAIRMAN DAVIS: I think you can understand that if we’re allowing you to operate a resource, that you have the responsibility to make sure that that resource is used
wisely. If you do not want to be the operator, that’s another story.

MR. BARRETT: There is that concern out there.

The primary concern is that the Board takes with the issue that we will forego the grant rather than take on the liability. The recent letter that we received from staff indicating litigation to remove the existing portion of the ramp on the State owned lands, that ramp has been in existence in excess of 50 years.

This is something that in 1969 Yuba City was operating the ramp, and they operated it until the Board of Supervisors took it over and leased it from the Levee District.

The Board would walk away from the ramp rather than sign the lease agreement, which would close the facility for the public use rather than assume the added liability in this litigious society.

EXECUTIVE OFFICER WARREN: Reference was made to added liability.

Under the State law to which this language refers that this liability is a present liability that they have and one that we would have if we did not protect ourselves. I may be wrong, and I have not explored this, but it’s my understanding that there is, under those laws, there is present responsibility.
MR. HIGHT: In the event that we were to take this clause out and went ahead and leased to the County, it's my opinion that the County is still liable under the Super Fund or State laws for toxic problems that would occur.

MR. STEVENS: I think you're right. The potentially responsible parties include everyone exercising any kind of control or operation with respect to a site. The liability is strict. Certainly, it could involve the county reclamation districts and lessee that they are under, and the efforts to name the State in the SP Dunsmuir spill in the Sacramento River could be pointed to.

CHAIRMAN DAVIS: We're not adding any additional burden on you. Our lawyers believe that you have that burden.

MR. BARRETT: Our attorney has expressed to me that we would be named under existing legislation. He does not feel that it's in the County's interests to hold the State harmless in this issue. That is his position, not that we do not have liability.

COMMISSIONER McCARTHY: We're representing the same taxpayers. Any litigation is going to sue either the People of California or the People of Sutter County.
Supervisor Licari, I applaud the lead that the county has shown to operate it.

I appreciate your counsel trying to provide advice to reduce -- it doesn't reduce our being a defendant but forces all taxpayers in the State.

We do not want to be unreasonable in this in anyway, but it's an accepted principle in all such cases that it's the operator of the facility that has the opportunity to exercise prudent management. We're at a distance here. We're not down there looking at the ramp or operating it.

We have no reasonable way to make sure that irresponsible people do not use it. It's the management of the facility.

The Federal government does that to the State when we manage different facilities. That has to be the view point.

I do not think that we would hesitate to take responsibility. It's two agencies trying to play the ball back and forth, but the question is the issue of who has management; and, therefore, the real opportunity to prevent the negative conduct should be the party that figures out how to minimize the litigation, and, gentlemen, it's your agency.

It's not something that we can control.
MR. LICARI: Mr. Chairman, on the second to last page of my comments, one of the other recommendations of your staff is that you authorize staff counsel or the Attorney General to take all steps necessary including litigation to remove that portion of the existing ramp which occupies State owned lands.

We lease the boat ramp from Upland Territory from Levee District 1. We have no authority to negotiate with the Commission on this issue.

But, if I may, aside from the boat ramp, and I have only been a Supervisor for two years, I am appalled with the rules and regulations piled one on top of the other.

We can't -- it's becoming impossible to legislate at the local level because of all of the turmoil that is involved. You go for a grant, you wait nine months. You cut fourteen trees for one application.

I do not know, and I hope I'm talking to the right people because something has got to be done to stop this bureaucracy from eroding everything that we are trying to do.

I see this as one of them. If the law is provided for the public, then the regulations come behind it, and it seems if the State approve $100 to us, by the time that it gets to the recipients it's worth $5. Maybe
I'm speaking out of turn.

   Excuse me. It's real, real frustrating. We cannot make a move, such as has been done 40 years ago, and now we're tied by the ankles and cannot walk.

   I'm sorry. I had to make the comments.

CHAIRMAN DAVIS: I empathize with your frustration. The regulatory process is out of hand, and it's the consequence of twenty-five agencies regulating one another. It's mind boggling.

   In the next twenty-five years, you will see substantial changes for the good, no question.

EXECUTIVE OFFICER WARREN: May I make the suggestion that I think that the County representative should assess their position on the Section 4 language, and upon doing so may include in the standard lease that we could offer --

   MS. SEKELSKY: The applicant can withdraw and reapply.

   CHAIRMAN DAVIS: Do you understand what they are saying?

   A law passed by very well-intentioned people, and actually I do not know if I voted on it, but requires that we act within a year, which is not an unreasonable rule.

   We're up against the year, and I assume this is the last meeting before the year expires. All we can do is
deny. We have to decide today on the current application.

If you refuse to accept the posed lease, the only option is either to accept our verdict that we will have to turn you down, and you no longer operate the facility, or you can withdraw the application and resubmit, allowing the staff the opportunity to work with you to minimize to the extent we can the problems that the legislation imposes.

MR. LICARI: If I may, Mr. Davis, I'm concerned about the litigation, and to remove the old ramp that has been there for approximately 50 years.

You want us to withdraw the application, we will withdraw it. But I'm upset with the last comment of removing the boat ramp that has been there long before any of these environmental things came up.

I'm not an environmental nut, but I believe in it.

EXECUTIVE OFFICER WARREN: Staff is persuaded to remove recommendation number 5.

CHAIRMAN DAVIS: You beat the staff into submission. We will delete that provision.

You will reapply and work with the staff. There are circumstances that we cannot get around.

MR. LICARI: Yes. It's all right.

CHAIRMAN DAVIS: The application is withdrawn and the staff will eliminate the condition that Mr. Warren
described, and you can work with staff to accommodate some of the concerns.

MR. LICARI: I appreciate having the opportunity to speak to this group, a first time for me. I have been a little nervous. Nonetheless, we really appreciate the opportunity to come and speak to you.

EXECUTIVE OFFICER WARREN: One final item, Mr. Chairman, Item 47 was inadvertently not removed from the Consent and put over for further meeting.

CHAIRMAN DAVIS: No objection?

So ordered. That concludes business at 12:05.

(Thereupon the meeting was adjourned at 12:05 p.m.)

--000--
CERTIFICATE OF SHORTHAND REPORTER

I, VICKI L. MEDEIROS, a Certified Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing hearing was reported in shorthand by me, Vicki L. Medeiros, a Certified Shorthand Reporter of the State of California, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this nineteenth day of January, 1993.

VICKI L. MEDEIROS
Certified Shorthand Reporter
License No. 7871